

into personalty for the payment of debts; in all which cases, the surplus, if any, goes as a residuum of the realty to the heir or

A mortgage to secure the payment of money, being a creature of equity, can only be correctly understood according to those equity principles by which the contract is regulated. It having been assumed in regard to such a security, that the creditor might be sufficiently reimbursed by the payment of the principal of the debt, with legal interest, at any time after the day of payment, when, according to the terms of the contract, the condition having been broken, and the estate at law having thereby become absolute, it followed, that, in equity, the debtor might, within a reasonable time, redeem his estate on the payment of the principal of the debt, with interest; and that as the debtor might be allowed, on those terms, to redeem, the creditor could not, after the day of payment, have his estate made perfectly absolute without a bill to foreclose, the court of equity, to which he was thus under a necessity of addressing himself, for that purpose, might prescribe the terms upon which his title should be made absolute; which, among other things, should be, that the debtor should have a further specified time, after the date of the decree, to pay the debt, with interest; and so redeem his estate; and this specified time, on its being shewn that the mortgaged estate greatly exceeded in value the amount of the debt, might, to prevent a sacrifice of the property, be from time to time enlarged to a reasonable extent.—(*Pow. Mortg.* 7, 103, 250, 961; 2 *Mad. Chan.* 492; *Ismoord v. Claypool*, 1 *Cha. Rep.* 262; *Monkhouse v. The Corporation of Bedford*, 17 *Ves.* 330; *Novostelski v. Wakefield*, 17 *Ves.* 418; *Edwards v. Cuntliffe*, 1 *Mad. Rep.* 286; *Parker v. Housefield*, 8 *Cond. Chan. Rep.* 63; *Bruere v. Wharton*, 10 *Cond. Chan. Rep.* 158.)

Such has always been the law of England; and in Maryland the same principles of equity have prevailed, in so far as to allow, for the same reasons, on a decree to foreclose or sell, the further time of twelve or eighteen months to the debtor to make payment.—(*Carroll v. Belt*, 1797; *Burt v. The Commissioners of Washington*, 1806; *Craig v. Rusk*, 1807.)—But as I never could satisfy myself of the propriety of thus extending the credit beyond the date of the decree, to the prejudice of the creditor, to whom mere legal interest could rarely be an adequate compensation for the delay of the payment of his money; (*Reynolds v. Pitt*, 19 *Ves.* 140;) and no such further indulgence being allowed to the debtor in mortgage cases any where but in England, where the practice of granting it has been regretted, and said to be unreasonable.—(2 *Mad. Chan.* 492.)—I have in all cases deemed it proper to limit the indulgence to one month, or to as short a time as was compatible with the observance of the rule, as one which had been expressly recognized by the General Assembly; (1785, *ch.* 72, s. 3;) since there can be no more just grounds for postponing the immediate execution of a decree in equity for the recovery of a debt in a mortgage case, than in suspending execution on a judgment at common law, in an action of debt on a bond under a stay law, which has been held to be unconstitutional, because of its impairing the obligation of the contract.—(*Campbell's Case*, 2 *Bland*, 237.)

But, in regard to infants, it has been declared, that where any person under twenty-one years of age, shall be possessed of any real estate mortgaged for securing the payment of any debt, and the day of payment has elapsed, the Chancellor may decree a sale of the mortgaged premises, or such part thereof as may be necessary to discharge the debt; or may decree a foreclosure of the whole or such part of the mortgaged premises as may be sufficient to satisfy the debt; and that too, as it would seem, without allowing the infant a day to shew cause; or requiring the plaintiff, as formerly, to give bond to refund or reconvey, on its being made to appear within one year after his arrival at age, that the decree was erroneous or